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Supreme Court, U.S.
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No. 97-1253

In The

Supreme Court of the United States

October Term, 1997

JANE DOE #102,

Petitioner,

v.

GEORGIA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF OF RESPONDENT IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the inquiry concerning the applicable statute of limitations is improper because the Georgia Department of Corrections is not a "person" within the meaning of 42 U.S.C. § 1983 pursuant to *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).

2. Whether the Supreme Court of Georgia correctly upheld the trial court's dismissal of the Petitioner's federal civil rights claims pursuant to the State of Georgia's general statute of limitations for personal injury actions, O.C.G.A. § 9-3-33, as required by *Wilson v. Garcia*, 471 U.S. 261 (1985) and *Owens v. Okure*, 488 U.S. 235 (1989).

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, Georgia Department of Corrections, respectfully submits this Brief in Opposition to the Petition for Certiorari filed in the above-captioned case.

STATEMENT OF THE CASE

A. Statement of Facts

Petitioner's statement of facts will not assist this court. Petitioner has recited an inflammatory version of facts which are not relevant to the strictly legal/procedural question before this Court. Respondent submits their concise statement of facts and shows the following:

Petitioner's complaint filed on or about June 27, 1994 sought damages for alleged violations of her rights protected by common law, the Georgia Constitution, and the Constitution of the United States while in the custody of Respondent in 1991. Pet. App. A-3-4. The alleged torts and constitutional violations occurred while Petitioner was incarcerated at Georgia Women's Correctional Institution during 1991. Pet. App. A-3. Petitioner's claims under 42 U.S.C. § 1983 alleged violations of her rights under the Fourth, Eighth, Tenth, and Fourteenth Amendments to the United States Constitution. Pet. App. A-4.

B. Proceedings Below

Petitioner filed a Complaint pursuant to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, in the State Court of Fulton County, State of Georgia, on June 27, 1994. Pet. App. 4B, 4a, 7a. Respondent filed a Motion to Dismiss

contending that venue was improper in Fulton County, that the civil action was barred by the applicable statute of limitations, that Petitioner had failed to comply with the *ante-litem* notice provision of the Georgia Tort Claims Act ("GTCA"), and that the Department of Corrections was not a "person" within the meaning of 42 U.S.C. § 1983. Pet. App. 1a. The State Court of Fulton County denied Respondent's Motion to Dismiss but granted the Motion to Transfer to the State Court of Baldwin County. Pet. App. 1a. Respondent then filed a proper Renewed Motion to Dismiss pursuant to the Georgia Uniform Transfer Rules in the State Court of Baldwin County noting that the State Court's Order transferring the matter to Baldwin County was silent on Respondent's specific assertions that all of Petitioner's claims, under both federal and state law, were barred by the applicable statute of limitations and that the Department of Corrections is not a "person" within the meaning of 42 U.S.C. § 1983. Pet. App. 1a, 7a-9a.

On May 6, 1996, the State Court of Baldwin County dismissed Count Three of Petitioner's Complaint alleging violations of her rights under 42 U.S.C. § 1983 based on the applicable two-year statute of limitations. Pet. App. 8a-9a. The court deemed it unnecessary to consider the issue of whether the Department of Corrections is a "person" within the meaning of 42 U.S.C. § 1983 based on the Court's ruling on the statute of limitations. Pet. App. 9a. The Court further held that the Petitioner had not complied with the Georgia Tort Claims and dismissed her Complaint. Pet. App. 9a-10a. Petitioner then appealed the Order to the Court of Appeals of the State of Georgia.

The Georgia Court of Appeals transferred Petitioner's Appeal to the Georgia Supreme Court. Pet. App. 6a. Respondent again contended that Petitioner's 42 U.S.C. § 1983 claims were barred by the two-year statute of limitations under O.C.G.A. § 9-3-33 and that the Georgia Department of Corrections is not a "person" within the meaning of § 1983. The Georgia Supreme Court held that Petitioner had timely complied with the *ante litem* notice provisions of the Georgia Tort Claims Act and reversed the trial court's dismissal of the Complaint. Pet. App. 3a. However, the Georgia Supreme Court, affirmed the dismissal of Petitioner's § 1983 claims on statute of limitations grounds pursuant to O.C.G.A. § 9-3-33 and held the following:

> The Baldwin County Court correctly dismissed the federal civil rights claims as untimely. The two-year statute of limitation in O.C.G.A. § 9-3-33 governs claims brought under 42 U.S.C. § 1983 because such claims are most accurately characterized as personal injury actions. *Battle v. Barts*, 211 Ga. App. 106, 107 (438 S.E.2d 1985) (1993); *Day v. Brown*, 207 Ga. App. 134 (427 S.E.2d 104) (1993). *See also Owens v. Okure*, 488 U.S. 235 (109 S.Ct. 573, 102 L.Ed.2d 594) (1989); *Wilson v. Garcia*, 471 U.S. 261 (105 S.Ct. 1938, 85 L.Ed.2d 254) (1985); *Giles v. Garwood*, 853 F.2d 876 (11th Cir. 1988); *Williams v. City of Atlanta*, 794 F.2d 624 (11th Cir. 1986). Contrary to Doe's assertion, this is not changed by O.C.G.A. § 50-21-27(b), as its terms do not call for an extension of the period for filing § 1983 claims. The GTCA represents a waiver of the State's sovereign immunity, limited in extent and manner. O.C.G.A. § 50-21-23(a) and (b). *See also* O.C.G.A. §§ 50-21-21, 50-21-25(a). As such, its

> provisions should be narrowly construed. *Howard v. State of Georgia*, 226 Ga. App. 543(1) (487 S.E.2d 112) (1997); *Department of Human Resources v. Money*, 222 Ga. App. 149(1) (473 S.E.2d 200) (1996). Consequently, it does not expand the State's exposure for such federal claims beyond that expressly provided by the legislature in O.C.G.A. § 9-3-33.

Petitioner has now filed a Petition for Writ of Certiorari to review the judgment of the Supreme Court of Georgia.

REASONS FOR DENYING THE WRIT

The Petition does not warrant this Court's consideration. Supreme Court Rule 10 makes it clear that review on a writ of certiorari is not a matter of right but of judicial discretion and that a petition for a writ of certiorari will be granted only for compelling reasons. Supreme Court Rule 10. There are no compelling reasons to grant the within Petition. Rather, the law dictates its denial.

This Court has made it clear in the decisions of *Wilson v. Garcia*, 471 U.S. 261 (1985) and *Owens v. Okure*, 488 U.S. 235 (1989) that courts considering § 1983 claims should borrow the State's general or residual personal injury statute of limitations. This Court in *Owens* held that "every State has one general or residual statute of limitations governing personal injury actions" which is "easily identifiable." *Owens*, 488 U.S. at 245-247. This Court in *Owens* also stated that "potential § 1983 plaintiffs and defendants therefore can readily ascertain, with

little risk of confusion or unpredictability, the applicable limitations period in advance of filing an action. *Id.* at 248. As O.C.G.A. § 9-3-33 is clearly the State of Georgia's general personal injury statute of limitations, this Honorable Court must deny Petitioner's Writ pursuant to the aforementioned case law.

Moreover, Petitioner's argument completely ignores the threshold question that Respondent, Georgia Department of Corrections, is not a "person" within the meaning of § 1983 pursuant to *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). Thus, 42 U.S.C. § 1983 does not even apply to this Respondent and any inquiry concerning the statute of limitations is therefore completely irrelevant.

ARGUMENT

1. The Georgia Department of Corrections has argued at each level of the proceedings that it is not a "person" within the meaning of § 1983 pursuant to *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). The Georgia Department of Corrections, the only party the Petitioner is proceeding against in this action, is not a proper party under 42 U.S.C. § 1983. Therefore, Petitioner sued the wrong party with respect to 42 U.S.C. § 1983 claims and is out of Court on these claims based upon her own error. Since the Department of Corrections is not a "person" subject to suit under 42 U.S.C. § 1983 and no other "person" is named against whom such claims can proceed, this Court could deny the Writ of Certiorari on this basis alone and proceed no further.

2. This Court's decisions in *Wilson v. Garcia*, 471 U.S. 261 (1985) and *Owens v. Okure*, 488 U.S. 235 (1989) are directly on point, controlling, and have conclusively determined the statute of limitations issue against Petitioner.

In *Wilson*, this Court granted certiorari to determine "the most appropriate state statute of limitations" for actions filed under 42 U.S.C. § 1983. *Wilson*, 471 U.S. at 261, 262. The District Court in this case concluded that § 1983 actions are best characterized as actions based on statute but that there was no specific New Mexico statute of limitations governing such claims. *Id.* at 263. The District Court held that § 37-1-4, the residual four-year statute, applied to § 1983 actions. *Id.* at 263. New Mexico had a two-year statute of limitations as contained in § 41-4-15(a) of the New Mexico Tort Claims Act, a statute with a three-year limitation period in § 37-1-8 for actions for an injury to the person or reputation of any person, and § 37-1-4 which provided a four-year limitation period for "all other actions not herein otherwise provided for." *Id.* at 263. The Court of Appeals for the Tenth Circuit held that the appropriate statute of limitations for § 1983 actions was the three-year statute applicable to personal injury actions. *Id.* at 265.

The United States Supreme Court granted certiorari in *Wilson* based on the "conflict, confusion, and uncertainty concerning the appropriate statute of limitations to apply to this most important, and ubiquitous civil rights statute." *Id.* at 266. The Court held that:

> We conclude that the statute (42 U.S.C. § 1988) is fairly construed as a directive to select, in each

> State, the one most appropriate statute of limitations for all § 1983 claims. The federal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach.

Id. at 275. The Court noted that "almost every § 1983 claim can be favorably analogized to more than one of the ancient common-law forms of action, each of which may be governed by a different statute of limitations." *Id.* at 272, 273.

This Court held that the Court of Appeals correctly applied the three-year statute of limitations governing actions "for an injury to the person or reputation of any person" on the basis that "§ 1983 claims are best characterized as personal injury actions." *Id.* at 280. This Court stated that:

> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983. General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted. It is most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect.

Id. at 279.

In the present case, Petitioner is arguing that O.C.G.A. § 50-21-27(b) of the Georgia Tort Claims Act is

applicable despite the presence of O.C.G.A. § 9-3-33, Georgia's general statute of limitations for personal injury. Similarly, in *Wilson, supra,* this Court held that the three-year statute of limitations for personal injury actions was the appropriate statute despite the presence of a two-year statute of limitations contained in § 41-4-15(a) of the New Mexico Tort Claims Act *and* a New Mexico State Police officer as a defendant. There is simply no reason for this Court to depart from this precedent in the within case.

In *Owens v. Okure,* 488 U.S. 235 (1989), this Court again addressed the issue of statute of limitations in section 1983 claims and again held adversely to Petitioner's position. The issue in *Owens* involved the identification of the correct limitations period for a § 1983 action where a state has one or more statutes of limitations for personal injury actions. *Owens,* 488 U.S. at 236. The Court stated that:

> In *Wilson,* we sought to end this 'conflict, confusion and uncertainty.' 471 U.S. at 266, 105 S.Ct. at 1941. Recognizing the problems inherent in the case-by-case approach, we determined that 42 U.S.C. § 1988 requires courts to borrow and apply to all § 1983 claims the one most analogous state statute of limitations. *Ibid. See id.,* at 275, 105 S.Ct. at 1946 ("[f]ederal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach"); *see also id.,* at 272, 105 S.Ct. at 1945 ("[A] simple, broad characterization of all § 1983 claims best fits the statute's remedial purpose"). We concluded, based upon the legislative history of § 1983 and the wide array of claims now

> embraced by that provision, that § 1983 'confer[s] a general remedy for injuries to personal rights.' *Id.* at 278, 105 S.Ct. at 1948. Because '§ 1983 claims are best characterized as personal injury actions,' we held that a State's personal injury statute of limitations should be applied to all § 1983 claims. *Id.* at 280, 105 S.Ct. at 1949.

Id. at 240-241.

This Court stated in *Owens* that "our task today is to provide courts with a rule for determining the appropriate personal injury limitation statute that can be applied with ease and predictability in all fifty states." *Id.* at 243. This Court further noted that "every state has one general or residual statute of limitations governing personal injury actions" and definitively held that:

> Where state law provides multiple statutes of limitations for personal injury actions, courts considering § 1983 claims should borrow the *general or residual* statute for personal injury actions.

Id. at 250 (emphasis supplied). This Court further stated that:

> *Our decision in Wilson promised an end to the confusion over what statute of limitations to apply to § 1983 actions; with today's decision, we hope to fulfill Wilson's promise.*

Id. at 251 (emphasis supplied).

Accordingly, the Supreme Court of Georgia was clearly correct in holding that the two-year statute of limitations in O.C.G.A. § 9-3-33 governs claims brought under 42 U.S.C. § 1983 and does not violate any federal law. The plain purpose of the aforementioned case law as

to "end the confusion over what statute of limitations to apply to § 1983 actions." *Owens*, 488 U.S. at 251. In fact, application of the limitations period in the Georgia Tort Claims Act would affect the very result this Court expressly intended to avoid. The Georgia Tort Claims Act applies *only* to state officials and does not apply to county, city or other local government officials. Therefore, applying O.C.G.A. § 50-21-27(b) to 42 U.S.C. § 1983 claims would result in an extended limitations period against state officials *only* and *only* for claims arising between January 1, 1991 and July 1, 1992. *See* O.C.G.A. § 50-21-27(b). Thus, any claims against local government officials and claims against state officials which arose outside of this limited period, would be subject to a two-year statute of limitations, a period different from the two-and-one-half-year extended limitations period under the Act. Thus, the very confusion this court expressly intended to resolve in *Wilson* and *Owens*, would be revisited upon Georgia litigants and would actually work a form of reverse discrimination upon state officials.

The reason underlying the extension of the two-year statute of limitations period under the Georgia Tort Claims Act is equally inapposite to Petitioner's cause. The two-year statute of limitations was extended for tort claims arising between January 1, 1991 and July 1, 1992 under the Georgia Tort Claims Act based upon legislative delay. In 1991, the voters of the State of Georgia ratified a Constitutional Amendment re-establishing the State's sovereign immunity. *See* Ga. Const. 1983, Art. I, Sec. II, Para. IX(e). This Amendment became effective on January 1, 1991 and authorized Georgia's General Assembly to enact a state tort claims act. Although the Legislature

failed to pass such an act during the 1991 legislative session, the Georgia Tort Claims Act was finally passed during the 1992 session. Simply because Petitioner may reap the benefit of the legislative delay with respect to her state tort claims, she is not thereby also entitled to any extension of the limitations period with respect to her federal claim.

Petitioner's argument is even more ridiculous in light of the fact that the Georgia Department of Corrections, the only named Defendant/Respondent in Ms. Doe's action, is not even a proper "person" within the meaning of 42 U.S.C. § 1983. Any analysis concerning the statute of limitations is therefore completely irrelevant in the within case. Moreover, Petitioner's thinly veiled attempt to circumvent the two-year statute of limitations was not tolerated in the Georgia courts and should not be countenanced by this Court. Petitioner always had a right to file her 42 U.S.C. § 1983 claim against a proper defendant in a timely manner. Her claim is barred by her own failure to do so and not by any act of the Georgia Supreme Court.

The cases cited by Petitioner are not applicable to the within case and even provide support for denying her Petition. In *Board of Regents of the University of the State of New York v. Tomanio*, 446 U.S. 478 (1980), the plaintiff brought a lawsuit pursuant to 42 U.S.C. § 1983 and the District Court held that a federal tolling rule should apply during pendency of the plaintiff's state court litigation. *Tomanio*, 446 U.S. at 482. The State of New York had a rule tolling the period of time in which to file an action while the plaintiff pursues a related but independent cause of action. *Id.* at 482, 483. This Court held that the

courts must apply the analogous New York statute of limitations and the New York rule for tolling that statute of limitations. *Id.* at 483. The Court noted that Congress did not establish a statute of limitations or body of tolling rules applicable to federal court actions under § 1983 and that the analogous statute of limitations and the coordinate tolling rules are binding rules of law in most cases unless they are "inconsistent" with federal law. *Id.* at 484, 485.

O.C.G.A. § 9-3-33 includes its own tolling provisions. *See* O.C.G.A. § 9-3-90 through § 9-3-98. In this regard see *Camps v. City of Winder,* 822 F.Supp. 724 (M.D. Ga. 1993) holding that the Georgia two-year statute of limitations period for personal injuries under O.C.G.A. § 9-3-33 applies to § 1983 claims and that state tolling provisions of § 9-3-90(a) apply to § 1983 claims as well. *Camps,* 822 F.Supp. at 729, citing *Wilson v. Garcia, supra.* There is no contention in the present case that the tolling provisions of § 9-3-33 do not apply. Pursuant to *Wilson* and *Owens,* § 9-3-33 must be applied and *Tomanio* does not provide any authority otherwise. Moreover, O.C.G.A. § 50-21-27(b) is *not* a tolling provision. It does not suspend the limitations period, but rather, extends it under limited circumstances. Therefore, Petitioner's insistence that this provision is a tolling statute, and that law pertaining tolling provisions applies herein, is totally unfounded.

The case of *Hardin v. Straub,* 490 U.S. 536 (1989) is equally inapplicable to this case. In *Hardin,* the Michigan Legislature had enacted tolling provisions tolling the onset of limitations periods for prisoners and others suffering from legal disabilities. *Hardin,* 490 U.S. at 540. The

Court held that "a state's decision to toll the statute of limitations during the inmate's disability does not frustrate § 1983's compensation goal." *Id.* at 543. The Court of Appeals for the Sixth Circuit had held that Michigan's tolling law was inconsistent with federal law and declined to apply it. *Id.* at 543. As stated previously, O.C.G.A. § 9-3-33 has its own coordinate tolling provisions and there is no challenge to these provisions from the Petitioner. There is no issue in this case of whether the Petitioner's lawsuit was tolled during her incarceration, which was repealed as a tolling provision under Georgia law many years ago.

In *Howlett v. Rose*, 496 U.S. 356 (1990), the isolated issue before this Court was "whether a state law defense of sovereign immunity is available to a school board otherwise subject to suit in a Florida court even though such a defense would not be available if the action had been brought in a federal forum." *Howlett*, 496 U.S. at 358. In *Howlett* the plaintiff brought a § 1983 claim in state court against the local school board and three school officials. *Id.* at 359. The court dismissed the complaint on the basis of a Florida Supreme Court decision, *Hill v. Department of Corrections*, 513 So.2d 129 (1987), holding that a Florida statute conferred blanket immunity on government entities from federal civil rights actions under § 1983. *Id.* at 364.

Howlett is distinguishable based on the fact that the defendants in that case were the local school board and three school officials, not state officials. In addition, *Howlett* actually supports Respondent's position by reinforcing the clear principle that the State and departments of the State are not "persons" within the meaning of § 1983 as

held in *Will, supra.* The Georgia Department of Corrections, as an arm of the State, is not a "person" and is not subject to suit under § 1983 in either federal or state court.

The case of *Hughes v. Sheriff of Fall River County Jail,* 814 F.2d 532 (8th Cir. 1987) is also readily distinguishable from the case at bar. In that case, South Dakota included a provision in its statute of limitations tolling provision stating that it was "inapplicable to federal civil rights claims." *Hughes,* 814 F.2d at 533. The Court noted that the State had "singled out federal claims subjecting them to more restrictive tolling provisions than those governing analogous state law claims" and held that this was "inconsistent with federal law." *Id.* at 535. In the present case, Petitioner does not argue that O.C.G.A. § 9-3-33 is inconsistent with federal law because its tolling provision includes any such provision. There is no challenge to the tolling provisions of O.C.G.A. § 9-3-33 and no evidence of any applicable tolling provision of this statute stating that it is "inapplicable to federal civil rights claims."

In *Dixon v. Chrans,* 986 F.2d 201 (7th Cir. 1993), the State of Illinois had a statute stating that the period for bringing a civil rights action against the Illinois Department of Corrections is not tolled for the time that the inmate bringing the action is in prison. *Dixon,* 986 F.2d at 202. Under state law, imprisonment was once considered a legal disability but that disability was removed for people in prison on criminal charges with respect to claims against the Illinois Department of Corrections or its employees. *Id.* at 202. The Court held that the State may not confer a tolling benefit and withhold it with

respect to claims brought against certain government officials when the result is to burden the federal cause of action. *Id.* at 205. The State of Georgia has no such tolling provision in O.C.G.A. § 9-3-33 and this is not even an issue in this case.

Petitioner's attachment of the Press Advisory on p. 29a is entirely inappropriate. The document was not a part of her Complaint, not properly part of the record on appeal and should not be included in this Court record either. There has been no finding either criminally or otherwise that the statements in the Press Advisory apply to Petitioner. In fact, the restraint procedure used by the mental health staff of the Department of Corrections has been conclusively established as constitutional in another case wherein the United States District Court for the Middle District of Georgia granted summary judgment to all the defendants on all of the plaintiff's claims. *Campbell v. Duncan,* Civil Action No. 5:94-CV-345-3. Nearly all of the other cases filed by individual "Jane Does" have been either dismissed on summary judgment or voluntarily dismissed by the plaintiff. *Jane Doe #28,* Civil Action No. 94-208-3-MAC (WDO) (MD Ga.) and *Jane Doe #45,* Civil Action No. 94-389-1-MAC (WLS) (MD Ga.), both dismissed on summary judgment; and *Jane Doe #90,* Civil Action No. 94A-90405-4 (Georgia State Court, DeKalb County), *Jane Doe #39,* Civil Action No. 93-405-1-MAC (WDO) (MD Ga.), and *McAteer,* Civil Action No. 94-CV-57-4-MAC (WDO) (MD Ga.), dismissed voluntarily by the plaintiffs.

The Petition for Writ of Certiorari in this case is contrary to the well established precedent of this Court. The Respondent is not a "person" within the meaning of

42 U.S.C. § 1983 and is not subject to Section 1983 liability as a matter of law. Similarly, it is well established that the two-year general statute of limitations in Georgia, found at O.C.G.A. § 9-3-33 which applies to all litigants in Georgia on tort claims is the proper statute of limitations in Petitioner's Section 1983 claim. It is essential for purposes of uniformity, predictability and clarity that O.C.G.A. § 9-3-33 applies, rather than the limited statute of limitations period found in the Georgia Tort Claims Act, O.C.G.A. § 50-21-27(b), which applies *only* to state officials, concerning *only* claims which arose between January, 1991 and July, 1992.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny Petitioner's Writ of Certiorari.

This 27th day of February, 1998.

Respectfully submitted,

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